STATE OF CALIFORNIA

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STATE BOARD OF EQUALIZATION
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April 17, 1997

Ms. P--- S. S---
State Tax Supervisor
E--- R---
XXX --- --- Drive
--- ---, MO XXXXX-XXXX

Re: E--- R--- C--- of --- ---
E--- R--- C--- of --- ---
E--- R--- C--- of ---
E--- L--- C--- - West

Dear Ms. S---:

This is in response to your letter dated February 18, 1997 regarding the application of tax to certain short-term vehicle leases made by the entities listed above (collectively referred to herein as E---). You ask whether leases made under the following circumstances are nontaxable sales for resale:

> "At times motor vehicle dealers request that E--- rent vehicles to their customers as replacements. These replacement rentals are provided to the dealers' customers according to a rental and transportation services program while their owned or leased vehicles are being repaired pursuant to the standard manufacturer's warranty. For example, Automobile Manufacturer X has a courtesy transportation program that provides the motor vehicle owner/lessee with a replacement vehicle when his/her vehicle is in for overnight standard warranty repairs at a dealer location. E--- rents a replacement vehicle to the customer and bills the motor vehicle dealer, a third party, or the manufacturer directly. If E--- bills the dealer or a third party, such dealer or third party is then reimbursed by Automobile Manufacturer X. The customer is not responsible for the charges.
>
> "E--- also rents vehicles at a dealer's request when a manufacturer provides for a replacement vehicle as a result of a recall. For example, Automobile Manufacturer X issues a recall for a specific problem and provides

> replacement rental coverage to the vehicle owner/lessee while the car is being repaired. The customer rents a motor vehicle from E---. E--- bills the dealer who is then reimbursed by Automobile Manufacturer X. The vehicle owner is not responsible for the charges covered by the recall."

Leases of tangible personal property in California are continuing sales (which are taxable unless for resale or specifically exempt by statute) unless the property is leased in substantially the same form as acquired and the lessor has timely paid sales tax reimbursement or use tax on purchase price. (See Reg. 1660.) Your question is only relevant if E--- does not elect to pay tax on purchase price, but instead collects tax on the rentals payable from the leases unless the leases are exempt or for resale. Thus, for purposes of this opinion, I assume that E---'s leases are continuing sales. I note also that this opinion is based on the understanding that the contracts for the lease of the vehicles are in actual fact contracts between the dealer and E---, and that the customers are in no way parties to the contract with E---. If this understanding is incorrect, this opinion does not apply (e.g., if the customer paid E--- and was reimbursed by the dealer, this opinion does not apply).

When a dealer provides a vehicle as an "accommodation" to its customer when repairing a vehicle, the dealer is a consumer of that vehicle. (See Rev. & Tax. Code § 6094(b) (if a dealer provides a vehicle from extax resale inventory as an accommodation, it owes tax measured by the fair rental value of the vehicle for the duration of the accommodation loan); see also Reg.1669.5(b)(6).) On the other hand, when a dealer is required to provide a vehicle to its customer who awaits repairs to his or her vehicle pursuant to the terms of a mandatory warranty the charge for which was included in the measure of tax, the dealer's loan of the vehicle to that customer is regarded as part of the original taxable sale of the vehicle. That is, the dealer is not regarded as using the loaned vehicle and no further tax is due with respect to the loan.

Our understanding is that the loaner program is part of the sale of a mandatory warranty contract, and that the dealer is *obligated pursuant to the terms of its contract with the owner* to provide the loaner vehicle. Based on this understanding, its loans are not accommodation loans but rather are part of the sale contract. We assume that tax was properly reported and paid on the sale and warranty contract. The dealer under these facts may lease the loaner vehicles from E--- extax for resale as part of the original sale contract.

With respect to vehicles loaned to lessees of vehicles, it is irrelevant whether the lease contract requires the dealer/lessor to provide a loaner vehicle while the leased vehicle is being repaired. If the lease is a taxable continuing sale, the loaner is regarded as sold as part of the taxable continuing sale. When a dealer/lessor leases a vehicle from you for the purpose of loaning the vehicle to such a lessee (one who is paying tax on rentals payable and continues to pay such rentals and tax thereon during the loan period), the dealer may lease the vehicle from E--- extax for resale as part of that taxable lease. On the other hand, if the lease is not a taxable continuing sale, then a loaner vehicle obviously cannot be regarded as sold to the customer as

part of a taxable continuing sale. Thus, a dealer who paid tax or tax reimbursement on its purchase price of a vehicle and leases that vehicle tax-paid uses any loaner vehicle provided to the customer whether that loan is required by the lease contract or not. When a dealer/lessor leases a vehicle from you for the purpose of loaning the vehicle to such a lessee (one who is not paying tax on rentals payable), the dealer/lessor may *not* lease the vehicle for resale. Rather, your lease of such vehicles to the dealer/lessor is subject to use tax measured by the rentals payable.

If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Supervising Tax Counsel

DHL/cmm

cc: --- District Administrator (--)
--- --- District Administrator (--)
--- District Administrator (--)
--- --- District Administrator (--)